



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Ms. Genevieve G. Stubbs  
Associate General Counsel  
The Texas A&M University System  
301 Tarrow, Suite 623  
College Station, Texas 77843-1246

OR94-603

Dear Ms. Stubbs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25365.

The Texas A&M University System (the "system") received an open records request from Mr. Ty Clevenger for, *inter alia*, all correspondence between the system's administration and its general counsel "pertaining to the method by which alcohol is purchased and paid for by the Office of the President." You state that after receiving the open records request, you made the determination that prior open records decisions addressed to the system regarding the attorney-client privilege governed the request and you therefore determined that the requested information was protected from required public disclosure by the attorney-client privilege. In light of those prior decisions, you further determined that the system was required neither to release the information to the requestor nor to request an open records decision from this office.

However, you sought an open records decision from this office only after this office received a complaint from the requestor that the system had failed to request a decision within ten days of the system's receipt of the open records request. Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception *if there has not been a previous determination about whether the information falls within one of the exceptions*. The governmental body must ask

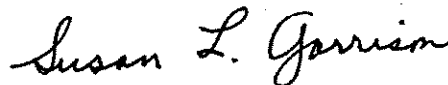
for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request. [Emphasis added.]

You have cited the previous open records decisions upon which you relied for withholding the requested information. However, this office has previously held that the requirement under section 552.301(a) to request an open records decision where "there has not been a previous determination about whether the information falls within one of the exceptions" can be fairly read as eliminating the need for a decision request *only* when the precise information at issue has been determined to be excepted from disclosure; where only the *standard* to be applied has been addressed, the *applicability* of the standard to particular information must be determined by the attorney general. Open Records Decision No. 435 (1986) (interpreting predecessor statute). *See also Houston Chronicle Publishing Co. v. Mattox*, 767 S.W. 2d 695, 698 (Tex. 1989) (specifying only that attorney general is authorized to determine what constitutes a "previous determination").

This office has not previously ruled that the information at issue is excepted from required public disclosure. Accordingly, we find that you have not in this instance requested an open records decision in a timely manner. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.-Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.-Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock* 797 S.W.2d at 381. You have not shown compelling reasons why the information at issue should not be released.<sup>1</sup> The information is presumed to be public and therefore must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

---

<sup>1</sup> We note that this office has recently held that the mere fact that information is within the attorney-client privilege does not constitute a "compelling" reason for withholding information. *See* Open Records Decision No. 630 (1994) (copy enclosed).

SLG/RWP/rho

Ref.: ID# 25365

Enclosures: Open Records Decision No. 630  
Submitted documents

cc: Mr. Ty Clevenger  
802 Rio Grande  
Bryan, Texas 77801  
(w/o enclosures)